

App. No. 09/882,076  
Amendment Dated: August 24, 2004  
Reply to Office Action of May 14, 2004

### REMARKS/ARGUMENTS

In the Office Action dated May 14, 2004, the Office Action states that claims 20-23 are rejected under 35 U.S.C. 112, second paragraph. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper (U.S. Patent No. 6,442,700) in view of Spell et al. (U.S. Patent No. 6,208,640). Claims 2, 8-10, 13, 15, and 19-23 are currently amended. Claims 1-23 remain pending. Applicants respectfully request allowance all pending claims.

#### I. Rejections under 35 U.S.C. 112

Claims 20-23 are rejected in the Office Action under 35 U.S.C. 112, second paragraph for the insufficient antecedent basis of "CPU throttler". Claims 20-23 have been amended to correct a mistake in the claim dependencies of the original application without further limiting the scope of the claims. Applicants respectfully request reconsideration of claims 20-23.

Also amended were claims 2, 8-10, 13, 15, and 19 to correct certain punctuation errors and claim dependencies without further limiting the scope of the claims.

#### II. Rejections under 35 U.S.C. 103(a)

Claims 1-23 are rejected in the Office Action under 35 U.S.C. 103(a) as being unpatentable over Cooper (U.S. Patent No. 6,442,700) in view of Spell et al. (U.S. Patent No. 6,208,640). Applicants respectfully disagree as explained below.

Applicants respectfully offer that there is no motivation or suggestion to combine these references. First, these two references are directed to two completely different endeavors in the

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in separate fields of the electronic arts. Cooper is primarily directed to thermal control of a system, while Spell et al. is primarily directed to bandwidth allocation for a telecommunication system. One (Cooper) is directed to a single computer architecture, while the second (Spell et al.) is directed to a network architecture. In fact, examining their cover pages, there is not a single overlapping U.S. class or field of search for these references. Even though these are both electronics references, Applicants respectfully submit that the Spell et al. reference should be considered non-analogous art as is it not directed to controlling CPU performance.

Secondly, the Cooper et al. reference actually teaches away from the present invention. Cooper teaches interrupting the high performance state of the CPU when a thermal threshold exceeded (Cooper column 2, lines 4-7) This means that the entire functionality of the Cooper reference occurs when the CPU is not idle. This is in direct opposition with the claimed invention. The Cooper reference goes beyond not including functionality for measuring a prior utilization of the computer while the CPU of the computer is idle, it is in complete opposition with this suggestion. Looking at claim 1 of Cooper affirms this as it includes the limitation of "executing user threads within the high performance state". Accordingly, Cooper teaches away from the claimed invention.

Third, there is no motivation to combine the references included in the references either explicitly or impliedly. One of ordinary skill in the art would not think to combine a reference for bandwidth management of a network with a reference for thermal management of a CPU. Both portions of the references cited against the claimed invention are presented as secondary considerations in each of the references. The measurement of workload is not the main

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consideration of Cooper whose primary consideration is temperature. Also, the cited portion of Spell et al. is directed not to the main operation of the Spell et al. invention, but to the support operations configured to analyze system operation and/or provide learning or other artificial intelligence. Accordingly, there is no explicit or implied motivation to combine these references within these couched disclosures by the references.

Lastly, Applicants respectfully submit that the idle state of the routing computer referred to in the Spell et al. reference does not teach or suggest the idle state of the CPU in the claimed invention. Idle state of a system such as a routing computer, and idle state of a CPU are completely different concepts in the art. An idle routing computer may have an number of processes running currently that are simply not directed the immediate routing of data across a network. Accordingly, the idle state of a routing computer and the idle state of a CPU are not the same.


In light of the above arguments, claims 1-23 are patentable over Cooper in view Spell et al. Accordingly, Applicants respectfully request reconsideration of claims 1-23.

In view of the foregoing amendments and remarks, all pending claims are believed to be allowable and the application is in condition for allowance. Therefore, a Notice of Allowance is respectfully requested. Should the Examiner have any further issues regarding this application, the Examiner is requested to contact the undersigned attorney for the applicant at the telephone number provided below.

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Respectfully submitted,

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